

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED

JAN 29 2018

Clerk, U.S. District Court
District Of Montana
Missoula

ROBERT A. LAKE,

Plaintiff,

vs.

HELSPER, HIENBUCK, WARDEN
OF GLENDIVE, TRISTAN KOHUT,
LANCE GRIFFEN, and LEROY
KIRKEGARD,

Defendants.

CV 17-46-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations in this case on November 17, 2017, recommending that this action be dismissed for failure to state a claim. Plaintiff Robert A. Lake ("Lake") failed to timely object to the findings and recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). The Court will therefore review the record for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

After reviewing the record and finding no clear error, this Court agrees with Judge Johnston that the Complaint, as currently pled, fails to state a federal claim

upon which relief may be granted. Lake was given an opportunity to file an amended complaint and did not do so.

Accordingly, IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 8) are ADOPTED IN FULL.

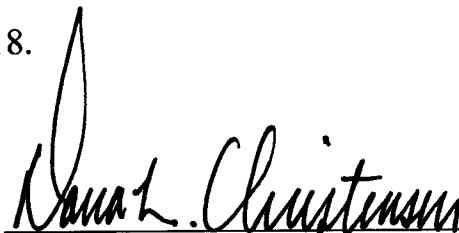
(1) This matter is DISMISSED.

(2) The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

(3) The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the instant Complaint lacks arguable substance in law or fact.

(4) The Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) based upon Lake's failure to state a claim.

DATED this 29th day of January, 2018.



Dana L. Christensen, Chief Judge
United States District Court